IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10453 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

M B MACWAN

Appearance:

1. Special Civil Application No. 10453 of 2000

MRS VASAVDATTA BHATT for Petitioner No. 1

MR JS BRAHMBHATT for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 17/06/2004

ORAL JUDGEMENT

The Gujarat State Road Transport Corporation has approached this Court under Article 227 of the Constitution of India to challenge the judgment and award

made by Industrial Tribunal No. 2 Baroda dated 7th February, 2000 in Reference [I.T.] No. 41 of 1995. By the said award the penalty imposed by the respondent of stoppage of three increments with permanent effect is substituted by penalty of stoppage of three increments without permanent effect.

2. It appears from the record of the petition and in particular the judgment of the Tribunal that the respondent at the relevant time was working as conductor in the bus plied by the petitioner. On the relevant date, the petitioner was discharging duty in the bus being plied between Ujjain and Baroda, it was 13th June, 1989. It appears that at place called Saber the bus was checked and it was found that the respondent had not done booking. According to the respondent, he could not do so because immediately after the bus started, there was physical scuffle amongst the passengers for seat in the bus and because of such incident, he could not do booking. It was only near Saber when he was about to start booking, the bus was checked. However, the checking squad after completing the formalities submitted the report and on the strength of it, the respondent was served with the chargesheet and the departmental inquiry was setup against him on the ground that he had not issued tickets to 40 passengers even after the bus had travelled about 20 kms. from its starting point. On conclusion of the inquiry, it was found by the Inquiry Officer that the charges levelled against the respondent were not true. The disciplinary authority, therefore, imposed punishment of stoppage of three increments with permanent effect. The said decision was disputed by the respondent and the said dispute ultimately, came to be referred to the Industrial Tribunal for adjudication.

2.1. Before the Tribunal, the facts aforesaid were repeated by both the sides. On the strength of the material that was produced before the Tribunal, it came to the conclusion that the penalty imposed upon the respondent was quite harsh since, it was causing substantial monetary loss. In that view of the matter, the Tribunal thought it fit to reduce punishment and accordingly the punishment was substituted by stoppage of three increments without permanent effect. It is this order which is now sought to be challenged in this petition.

3. Mrs. Vasavadatta Bhatt learned advocate appearing for the petitioner has submitted that this is a case of misappropriation of the amount belonging to the petitioner and, therefore, strict view was required to be

taken. It is further submitted that in the facts and circumstances of the case, the discretion exercised by the disciplinary authority was just and proper and it was not required to be interfered with by the Tribunal. She has also submitted that the respondent had not only allowed the overcrowding to be there in the bus but he even did not issue tickets with a view to illegally collect money from the passengers. For such facts, the punishment imposed by the disciplinary authority was just and proper.

4. Having gone through the record of the petition and also having considered the submissions of Mrs. Bhatt, it is clear that the respondent on that day was discharging duty between Ujjain and Baroda. Even after the bus had travelled about 20 kms. from Ujjain the respondent had not issued tickets. It was the say of the respondent that till the bus reached Saber, there was great commotion in the bus on account of passengers fighting among themselves for seat. He, therefore, could not issue tickets. This evidence has not been believed either by the Inquiry Officer or the Tribunal. However, the Tribunal has considered the material on record and has held that there is no allegation of defalcation of money made by the respondent. Further the checking did not record the statement of the concerned passengers and lastly that even the department permit the conductors to do booking upto one stage. One stage is distance of 6 kms. These factors though weighed with the Tribunal in assessing the quantum of punishment, it is found that the punishment imposed is harsh and it is required to be reduced. Thus, the Tribunal has exercised its own discretion on the factors that have been enumerated. There is, therefore, no difficulty to hold that the discretion has been exercised legally and judicially. If that be so, this Court under Article 227 of the Constitution of India can hardly have any scope to again disturb the same and restore the original penalty. In other words, when the Tribunal has found that ends of justice would meet if the punishment of stoppage of three increments with permanent effect is substituted by punishment of three increments without permanent effect, in my opinion, the conclusion reached by the Tribunal is just and proper. Considering the facts and circumstances of the case, I do not see any reason to disturb the Tribunal's decision. This petition has, therefore, no merit and it is required to be dismissed and it is hereby ordered to be dismissed. Rule is discharged with no order as to costs. Interim relief if any, stands vacated.

[AKSHAY H. MEHTA, J.]

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